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THE RECORD RENTAL AMENDMENT OF 1983

JUNE 23 (legislative day, JUNE 20), 1983.—Ordered to be printed

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 32]

The Committee on the Judiciary, to which was referred the bill (S. 32) with respect to commercial rental of phonorecords of sound recordings and of musical works, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. PURPOSE

The purpose of S. 32 is to amend title 17 of the United States Code with respect to commercial rental, lease, or lending of phonorecords of sound recordings and of musical works. Specifically, S. 32 would amend section 109(a) of title 17 to provide that, unless authorized by the copyright owners, the owner of a particular phonorecord may not, for purposes of direct or indirect commercial advantage, dispose of or authorize the disposal of the possession of that phonorecord by any activity or practice in the nature of rental, lease, or lending. Furthermore, the bill would make a conforming amendment to section 115 of title 17.

II. DISCUSSION

The Record Rental Amendment of 1983, S. 32, would amend title 17 to require authorization by the copyright owners before a particular phonorecord could be rented on a commercial basis. A more detailed discussion of the specific changes in existing law may be found in the section-by-section analysis of the bill contained in this report.

A similar proposal was introduced in the first session of the 97th Congress,[1] and was the subject of a hearing before this Committee on April 21, 1982.[2] No further action was taken on the proposal during

[1] Amendment No. 1333 to S. 1758, 97th Congress, 2d session, § 5 (1982).

[2] *Copyright Infringement (Audio and Video Recorders): Hearings on S. 1758 before the Committee on the Judiciary, United States Senate*, 97th Congress 1st and 2d sessions (Nov. 30, 1981, and Apr. 21, 1982) (hereinafter "*Hearings*").

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the 97th Congress. S. 32 was the subject of a hearing before the Subcommittee on Patents, Copyrights and Trademarks during the first session of the 98th Congress, and has attracted a wide measure of public support. Testifying before the subcommittee on April 29, 1983, David Ladd, the Register of Copyrights and Assistant Librarian of Congress for Copyright Services, said that:

> The Copyright Office supports passage of S. 32 to forestall the development of a major rental crisis in an already troubled industry.[3]

The bill is also supported by the record industry, the music publishers, songwriters, performers' unions, record retailers, and a broad coalition of other individuals, organizations and companies involved in the music industry.

THE RECORD RENTAL PROBLEM

Commercial record rentals are a recent phenomenon in this country, but a rapidly growing one.[4] The first record rental outlet opened in September 1981. Today, according to industry estimates, there are more than 250 rental shops throughout the United States. The rapid growth of commercial record rentals in this country parallels recent experience in Japan, where the record rental business originated in June 1980. There are now more than 1,700 rental shops in that country alone. The record rental phenomenon has also spread to other countries, notably Canada and a number of countries in Western Europe.

Record rental outlets in the United States offer a number of different rental schemes; a typical scheme today operates as follows. A customer can select from among a wide variety of records—singles or albums—especially current hits. The customer rents the record for anywhere from 24 to 72 hours, at rates ranging from 99 cents to $2.50 per disc. Most of the shops also stock blank cassette tapes, which they often sell at a discount—or sometimes give away as a promotional gimmick—to customers who rent the albums. The Committee has no doubt that the purpose and result of record rentals is to enable and encourage customers to tape their rented albums at home. According to a recent Japanese survey, over 97 percent of all rental shop customers in that country acknowledged that they made home tape recordings of the rented records. Thus, a record rental and a blank tape purchase is now an alternative way of obtaining a record without having to buy one. The rental is a direct displacement of a sale.

The Committee is concerned that this record rental problem will soon worsen as a result of a new technological breakthrough—the development and imminent marketing of the digital "compact disc"—which promises to increase record rentals even more. The compact disc is a small, virtually indestructible record album. It is difficult to damage, it will last a very long time, and it provides better sound

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[3] Statement of David Ladd, Register of Copyrights and Assistant Librarian for Copyright Services, before the Subcommittee on Patents, Copyrights and Trademarks of the Senate Committee on the Judiciary, 98th Congress, 1st session 14 (Apr. 29, 1983).

[4] *See generally* Joint Statement of AGAC/The Songwriters Guild, The National Association of Recording Merchandisers, The National Music Publishers' Association, and The Recording Industry Association of America re: S. 32, Before The Subcommittee on Patents, Copyrights and Trademarks of the Senate Committee on the Judiciary 1 (Apr. 29, 1983) (hereinafter *"Joint Statement"*).

reproduction than ever before. Rental shops will soon be able to rent out each compact disc hundreds of times, while providing their customers with a high quality recording that is particularly suitable for reproduction.

The Committee has concluded that record rentals pose a serious threat to America's record companies, music publishers, performers, songwriters, and record retailers. In Japan, where rental shops now represent 20 percent of all retail record outlets, the record industry has recently suffered its first sales decline in 25 years. According to a recent Japanese survey, record sales by retail outlets in the vicinity of rental shops have dropped by 30 percent. The Committee sees no reason to doubt that the Japanese experience is a precursor of things to come in this country, absent the Congressional action recommended in this Report.

Commercial record rentals in the United States hurt copyright owners when record rentals displace record sales. This is because record rentals are almost invariably followed by unauthorized home taping, thereby resulting in even fewer record sales. Yet copyright owners are not compensated either for the rental itself or for the unauthorized home recording. Thus, as record rentals become more widespread, they will undoubtedly add to the estimated $1 billion annual loss in record sales already caused by home taping.[5] Record retailers rely on the "first sale doctrine" (described more fully below) to rent their inventory of purchased records without permission of the copyright owners.

Ultimately, the Committee finds that uncompensated record rentals are contrary to the interests of consumers. As record sales drop because of the rental phenomenon, record companies will be forced to spread their production costs over the smaller number of records sold. This is likely to cause the price of these records to increase—in effect forcing legitimate purchasers to subsidize those who tape rented records. In other words, consumers who honor the copyright laws will be penalized.

Just as significant, in the Committee's view, is the overall effect on musical creativity. Record companies have already retrenched as a result of home taping. The sales displacement caused by continued record rentals would require even greater cutbacks. The normal way in which record companies and music publishers have traditionally cut their costs has been to reduce risk. Record companies and music publishers will inevitably become less willing to take a chance on unknown artists and songwriters or to experiment with innovative musical forms. Again, the consumer is the ultimate loser.

EXISTING LAW

Under existing law, owners of copyright in sound recordings and musical works have the exclusive right to control the reproduction of their works,[6] and to control public distribution of phonorecords of their work ". . . by sale . . ., rental, lease or lending."[7] However, the distribution right—unlike the reproduction right—is limited by

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[5] *See Hearings, supra*, at 920, 924 (Statement of Dr. Alan Greenspan).
[6] 17 U.S.C. § 106(1).
[7] 17 U.S.C. § 106(3).

the so-called "first sale doctrine" in section 109(a) of title 17.[8] The first sale occurs at the time the copyright owner conveys title to an unrelated entity or person—be it a jobber, a distributor, a retailer, or the ultimate consumer. The first sale doctrine provides that a copyright owner's exclusive right to distribute a particular phonorecord does not extend beyond the first sale of that phonorecord. Thus, under section 109(a), a person who purchases a record is free to sell, rent, or otherwise dispose of it (though not to reproduce it or publicly perform the underlying musical work) without permission of or compensation to the owners of copyright in the works embodied therein.

The first sale doctrine was originally adopted by the courts to give effect to the early common law rule against restraints on the alienation of tangible property.[9] It was first codified in the Copyright Act of 1909,[10] and retained in somewhat modified form in the 1976 Copyright Act.[11] The Committee concludes that the first sale doctrine was never intended to allow or to sanction commercial record rentals which lead inevitably to widespread and unauthorized home taping.

In considering the need for a change in the law, the Committee has considered the argument that private contractual remedies would not suffice to rectify the record rental problem. Even though the record rental phenomenon is not yet well entrenched in this country, and any assessment of the efficacy of private remedies is speculative, the Committee nonetheless concludes that these remedies may be difficult to enforce.

The Committee does not find that litigation is an effective solution to the pattern of rental-and-taping. Even though the first sale doctrine does not authorize unlawful copying,[12] it would be undesirable and impracticable for copyright owners to bear the burden of bringing hundreds of copyright infringement actions against individual record rental shops that facilitate unauthorized home taping.

PROPOSED LEGISLATION

Accordingly, the Committee has concluded that a limited modification of the first sale doctrine is warranted to remove the threat that commercial record rentals pose to the health of America's music community.

The Committee believes that S. 32 is a necessary and an appropriate response to the growing record rental problem. It would restore to copyright owners meaningful protection against the duplication of their works.

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[8] Section 109(a) provides, in its entirety as follows: "Notwithstanding the provisions of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord."

[9] *See Bobbs Merrill Co. v. Straus*, 210 U.S. 339 (1908). *See generally* Statement of David Ladd, Register of Copyrights and Assistant Librarian for Copyright Services, Before the Committee on Patents, Copyrights and Trademarks of the Senate Committee on the Judiciary, 98th Congress, 1st session 6–10 (Apr. 29, 1983).

[10] Act of March 4, 1909, ch. 320, § 41, 35 Stat. 1082 (1909).

[11] 17 U.S.C. §109(a).

[12] Under existing law, it has been held that a record store is liable for copyright infringement for lending a record to a customer and allowing the customer to tape the record on the store's recording equipment, regardless of whether the store's employees assist the customer in making the copy. *Elektra Records Co. v. Gem Electronic Distributors, Inc.*, 360 F. Supp. 821 (E.D.N.Y. 1973).

Finally, the Committee wishes to emphasize that S. 32 would promote the fundamental constitutional purpose of the copyright laws—"to Promote the Progress of Science and useful Arts."[13] Under the Constitution, Congress is authorized to grant copyright protection not only to reward creators for the commercial use of their works but also to stimulate the creation of new works for the public benefit.[14] Commercial record rentals, to the extent that they displace sales, offend the precepts of the Constitution because they deny creators a fair return from the exploitation of their works. But the ultimate loser is the American public, which is denied access to the quantity and quality of new creations that the copyright system would otherwise afford.

Finally, the Committee concludes that the modification of the first sale doctrine proposed in S. 32 and the reasons cited in this report are appropriate in light of the unique problems presented by record rental and copying. The Committee has under separate consideration legislation dealing with other aspects of the first sale doctrine.

The bill would constitute only a minor modification of the first sale doctrine. It would not restrict the purchaser's right to sell or give away a record. And it would not affect the noncommercial lending activities of nonprofit public libraries.

The Committee has carefully considered the implications of the proposed legislation with respect to antitrust policy in general. Nothing in this bill is intended to be either an express or implied repeal of our Federal antitrust laws. As already noted, the bill does not interfere with a retailer's freedom under existing law to sell the records they purchase or to set their selling price; it represents only a narrowly crafted solution to the particular problem identified in this report. Moreover, the bill does not create any new antitrust exemption, and it does not weaken the general rules governing vertical restraints on distribution. The proposed bill would not enable copyright owners to engage in conduct that is currently unlawful under the antitrust laws. Accordingly, the Committee has concluded that the passage of S. 32 is wholly consistent with the principles that underlie the antitrust laws.

III. Section-by-Section Analysis

SECTION 2

Section 2 of the bill, as amended by the Subcommittee, amends existing section 109(a) of title 17. A more detailed discussion of the Subcommittee's amendments may be found in the section of the Report entitled "Subcommittee Action."

Section 109(a) presently provides that the owner of a particular phonorecord lawfully made is entitled to sell or otherwise dispose of the possession of that phonorecord without the consent of the copyright owners of the copyrighted works embodied therein. Section 2 would add a proviso to existing section 109(a) to make clear that the privilege provided by that section does not, unless authorized by the copyright owners, extend to rental, lease, or lending of a phonorecord for purposes of direct or indirect commercial advantage. The

[13] U.S. Constitution, Art. 1, § 8.
[14] *See Mazer* v. *Stein*, 347 U.S. 201, 219 (1954).

operation of the proposed legislation would be simple. In order to rent phonorecords commercially, a record retailer would need to obtain a license to do so. The copyright owners with licensing authority would be free to decide how best to market their creative property: by sale, by rental, or both. However, they would be under no obligation to authorize rentals. Rental of a phonorecord without authorization, or in violation of an agreement governing rentals, would constitute an infringement of copyright.

It should be emphasized that proposed section 109(a) does not preclude a purchaser of a lawfully made phonorecord from reselling it or giving it away. Nor does it prevent nonprofit public libraries from lending phonorecords on a noncommercial basis, even if they charge a nominal fee to cover their administrative costs.

The Committee cannot anticipate every artifice, now contemplated or later devised, by which retailers or other persons may attempt to evade the obligations imposed by the proposed legislation. For example, the Committee is aware of claims by certain retailers that they will be able to circumvent this bill by selling record albums and buying them back a few days later; or by selling, lending or giving away albums for "preview" purposes and taking them back at a later date. Likewise, record "clubs" may seek to frustrate the bill by "lending" record albums to their members without charging a direct rental fee, while indirectly deriving rental income from a periodic membership or subscription fee. Accordingly, by referring to "any other activity or practice in the nature of rental, lease, or lending," and by using the term "direct or indirect commercial advantage," it is the Committee's intention to include within the scope of the proposed legislation any commercial transaction by which revenue or other commercial advantage is gained, directly or indirectly, from the disposition and return of the same phonorecord, or other transaction analogous to rental, lease or lending, regardless of the formal description that the parties apply to their transaction.

The term "sound recording," as used in the Act and in the bill, does not apply to the music or other sounds that physically accompany and are an integral part of a motion picture or other audiovisual work. This term was chosen to make clear the Committee's intent that this particular legislation would not authorize the owners of copyrights in the music or other sounds which accompany a movie, videocassette, video discs, or other audiovisual work to bar or otherwise limit the rental of these audiovisual works based on their rights under the Copyright Act. Likewise, for instance, the prerecorded audiovisual clips of new songs and groups which are now being made for broadcast on cable and pay-television do not fall within the scope of this legislation. These audiovisual works are addressed in another bill that is now pending before the Subcommittee on Patents, Copyrights and Trademarks.

The Committee is aware that prerecorded data signals are processed by computer technologies or other electronic information systems. Certain of these technologies specifically utilize audio tones. The status of these information technologies and materials under the Copyright Act is not affected by this legislation and, specifically, the Committee does not intend that this bill apply to these types of material where they

fall outside the definition of a "sound recording" under the existing Copyright Act.

SECTION 3

Section 3 of the bill, which was added by the Subcommittee, is intended to conform existing section 115 of title 17 to the changes made by the bill in existing section 109(a). Specifically, it is the Committee's intention to make clear that the right of authorization accorded to copyright owners of recorded musical works under revised section 109 (a) is subject to compulsory licensing under revised section 115. This compulsory licensing system is not intended to impose any obligation on the owner of copyright in a sound recording to rent or authorize rentals of that sound recording. A more detailed discussion of the specific changes in existing section 115 may be found in the section of this report entitled "Subcommittee Action."

SECTION 4

Section 4 of the bill provides that it shall become effective upon the date of its enactment.

The Committee intends that this legislation will not have retroactive effect. This means that a person who acquired ownership of a particular phonorecord prior to the effective date of the Act may dispose of the possession of that particular phonorecord after the effective date of the Act in any manner permitted by section 109(a) of title 17 as in effect prior to the Act's effective date.

IV. Subcommittee Action

On May 26, 1983, the Subcommittee on Patents, Copyrights and Trademarks, under the chairmanship of Senator Charles McC. Mathias, Jr., of Maryland, unanimously agreed to report S. 32 to the full Committee. Two amendments, offered by Mr. Hatch, were agreed to by the Subcommittee.

The purpose of the first amendment was to clarify the proposed proviso to section 109(a) in two respects. First, the amendment deleted the reference to the "copyright owner" in lines 8 and 9 on page 1 of the bill and substituted a reference to the "owners of copyright in the sound recording and in the musical works embodied therein" in order to make clear that the bill is fully applicable to the copyright owners of the recorded musical works as well as of the sound recording itself.

In addition, the amendment deleted the words "of a sound recording" after the word "phonorecord" in lines 9 and 10 on page 1 of the bill. In light of the change just mentioned and the definition of a "phonorecord" in existing action 101 of title 17, the Subcommittee believed that the reference to "a sound recording" was superfluous.

Finally, by adding the words "or authorize disposal" after the word "dispose" in line 1 on page 2 of the bill, the amendment clarified the Subcommittee's intention that the owner of a particular phonorecord is not entitled either to engage in commercial rental activity itself or to authorize another person to engage in such activity without the consent of the copyright owners.

The purpose of the second amendment was to conform existing law to the Subcommittee's clarifying amendment described above. Under existing section 5 of title 17, the exclusive rights to make and to distribute phonorecords of musical works are subject to compulsory licensing. The amendment added a new clause to existing section 115(c) to make clear that the right of authorization accorded to owners of copyright in recorded musical works under revised section 109(a) would be subject to compulsory licensing under revised section 115. The new clause reads as follows:

> (3) A compulsory license under this section includes the right to distribute phonorecords by rental, lease, or lending (or by acts or practices in such nature). Without prejudice to the royalty payable under clause (2) of this subsection and chapter 8 of this title, a royalty shall be payable by the compulsory licensee for every act of distribution of a phonorecord by or in the nature of rental, lease, or lending, by or under the authority of the compulsory licensee. With respect to each work embodied in the phonorecord, the royalty shall be a proportion of the revenue received by the compulsory licensee from every such act of distribution of the phonorecord under this clause equal to the proportion of the revenue received by the compulsory licensee from distribution of the phonorecord under clause (2) that is payable by a compulsory licensee under that clause and under chapter 8. The Register of Copyrights shall prescribe regulations to carry out the purpose of this clause.

The amendment also renumbered clauses (3) and (4) of existing section 115(c) accordingly.

The new clause makes clear that the owner of copyright in a sound recording may rent phonorecords of that sound recording without the consent of the owner of copyright in the recorded musical work by complying with all the conditions of the compulsory license contained in revised section 115. Consistent with existing section 106(3) and subject to the same conditions, the compulsory licensee's "right to distribute" phonorecords by means of rental under new section 115(c)(3) includes the right to authorize rentals by others. (The inclusion of the right to authorize rentals by others within the word "distribution" applies to other clauses of the revised section, such as (b)(1) and (2) and renumbered (c)(5).)

The second sentence of the new clause makes clear that a royalty under the compulsory license is payable by the compulsory licensee for each act in the nature of rental (not merely for each phonorecord), whether engaged in directly by the licensee or under the licensee's authority. Furthermore, the royalty is payable "[w]ithout prejudice to the royalty payable under clause (2) . . . ." This means that where a compulsory licensee has "voluntarily and permanently parted with the possession" of a phonorecord, the royalty set forth in existing section 115(c)(3), as adjusted under chapter 8 of title 17, is payable for that phonorecord; where the licensee rents or authorizes the rental of a phonorecord, the royalty set forth in new section 115(c)(3) is payable for each rental transaction; and where the licensee distributes or authorizes the distribution of a phonorecord under the

circumstances described in both clause (2) and clause (3) of revised section 115(c) (*e.g.*, sales followed by authorized rentals), a royalty is payable under both clauses.

The royalty payable by a compulsory licensee under the third sentence of new clause (3) is to be proportionate to the sharing of revenues between owners of copyright in recorded musical works and compulsory licensees under existing clause (2). Where phonorecords have been voluntarily and permanently distributed pursuant to a negotiated license as opposed to a compulsory license, the reference to "the revenue received by the compulsory licensee under clause (2)" is intended to mean the revenue received from the distribution of phonorecords pursuant to the negotiated license; the proportion is to be derived by comparing such revenue to the statutory rate in clause (2) as then in effect under chapter 8. The Subcommittee recognized that the proportion upon which the royalty is to be based would not always be capable of precise calculation in direct relation to clause (2). For example, the compulsory licensee may not have "voluntarily and permanently" distributed phonorecords of the same work, or the phonorecords may have been so distributed at varying prices. Accordingly, the Copyright Office is to issue appropriate regulations as and when necessary to carry out the purposes of clause (3). These regulations are to provide the governing basis for determining an "equal" proportion in order to insure that owners of copyright in recorded musical works are fully compensated for every act of rental, lease, or lending, and for every act in the nature of rental, lease, or lending, by or under the authority of the compulsory licensee. Likewise, it is intended that the regulations will assure that copyright owners are fully and promptly compensated for all royalties payable under revised section 115, that accounting and related requirements and practices under new clause (3) will not detract from royalty obligations under existing clause (2), and that the regulatory, statement of account, and certification provisions of renumbered clause (4) are fully applicable to rental transactions.

The references in the amendment to chapter 8 of this title are intended to make clear that the references to the royalty payable under existing section 115(c)(2) include any adjustments made to the royalty rate by the Copyright Royalty Tribunal under chapter 8. However, the amendment is not intended to affect in any way the royalty rate determined under existing section 115(c)(2) in the past or the adjustment of that rate in the future.

V. Committee Action

On June 16, 1983, the Committee on the Judiciary, a quorum being present, unanimously agreed to report S. 32, the Record Rental Amendment of 1983, as amended by the Subcommittee.

VI. Regulatory Impact Statement

In compliance with paragraph 11(b), Rule XXVI, of the Standing Rules of the Senate, the Committee has concluded that the bill will have no regulatory impact.

VII. Cost of Legislation

In accordance with paragraph 11(a), Rule XXVI, of the Standing Rules of the Senate, the Committee offers the Report of the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., June 20, 1983.

Hon. Strom Thurmond,
Chairman, Committee on the Judiciary, U.S. Senate,
Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 32, the Record Rental Amendment of 1983, as ordered reported by the Senate Committee on the Judiciary, June 16, 1983.

Based on this review, it is expected that no additional cost to the government would be incurred as a result of enactment of this legislation. The bill prohibits the rental, lease, or lending of phonorecords for commercial purposes without first gaining permission from the owner of the sound recording copyright.

Enactment of this bill would not affect the budgets of state and local governments.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

James Blum
(For Alice M. Rivlin, Director).

VIII. Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI, of the Standing Rules of the Senate, changes in existing law made by S. 32 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 17—COPYRIGHTS

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CHAPTER 1.—SUBJECT MATTER AND SCOPE OF COPYRIGHT

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§ 109. Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord

(a) Notwithstanding the provisions of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority

of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord[.]; *Provided, however, That unless authorized by the owners of copyright in the sound recording and in the musical works embodied therein, the owner of a particular phonorecord may not, for purposes of direct or indirect commercial advantage, dispose or authorize disposal of the possession of that phonorecord by rental, lease, or lending, or by any other activity or practice in the nature of rental, lease, or lending.*

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§ 115. Scope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords

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(c) ROYALTY PAYABLE UNDER COMPULSORY LICENSE.—(1) To be entitled to receive royalties under a compulsory license, the copyright owner must be identified in the registration or other public records of the Copyright Office. The owner is entitled to royalties for phonorecords made and distributed after being so identified, but is not entitled to recover for any phonorecords previously made and distributed.

(2) Except as provided by clause (1), the royalty under a compulsory license shall be payable for every phonorecord made and distributed in accordance with the license. For this purpose, a phonorecord is considered "distributed" if the person exercising the compulsory license has voluntarily and permanently parted with its possession. With respect to each work embodied in the phonorecord, the royalty shall be either two and three-fourths cents, or one-half of one cent per minute of playing time or fraction thereof, whichever amount is larger.

(3) A compulsory license under this section includes the right to distribute phonorecords by rental, lease, or lending (or by acts or practices in such nature). Without prejudice to the royalty payable under paragraph (2) of this subsection and chapter 8 of this title, a royalty shall be payable by the compulsory licensee for every act of distribution of a phonorecord by or in the nature of rental, lease, or lending, by or under the authority of the compulsory licensee. With respect to each work embodied in the phonorecord, the royalty shall be a proportion of the revenue received by the compulsory licensee from every such act of distribution of the phonorecord under this paragraph equal to the proportion of the revenue received by the compulsory licensee from distribution of the phonorecord under paragraph (2) that is payable by a compulsory licensee under such paragraph and under chapter 8. The Register of Copyrights shall prescribe regulations to carry out the purpose of this paragraph.

[(3)] *(4)* Royalty payments shall be made on or before the twentieth day of each month and shall include all royalties for the month next preceding. Each monthly payment shall be made under oath and shall comply with requirements that the Register of Copyrights shall prescribe by regulation. The Register shall also prescribe

regulations under which detailed cumulative annual statements of account, certified by a certified public accountant, shall be filed for every compulsory license under this section. The regulations covering both the monthly and the annual statements of account shall prescribe the form, content, and manner of certification with respect to the number of records made and the number of records distributed.

[(4)] *(5)* If the copyright owner does not receive the monthly payment and the monthly and annual statements of account when due, the owner may give written notice to the licensee that, unless the default is remedied within thirty days from the date of the notice, the compulsory license will be automatically terminated. Such termination renders either the making or the distribution, or both, of all phonorecords for which the royalty has not been paid, actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509.

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